

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**ANDRE J. TWITTY,**

**Plaintiff,**

**vs.**

**E.A. STEPP, TERRY S. BAKKE, DR.  
LEE, PHYSICIAN ASST. CAIRDS, G.L.  
HERSCHBERGER, N.L. CONNER,  
ASSOCIATE WARDEN NITCHOLS,  
JUDITH THARP, HEATH SERVICE  
ADMINISTRATOR OXFORD,  
ASSOCIATE WARDEN BEZY,  
PHYSICAN ASSISTANT MILLER,**

**Defendants.**

**No. 03-CV-779-DRH**

**MEMORANDUM AND ORDER**

**HERNDON, District Judge:**

On, November 21, 2003, Andre J. Twitty, an inmate at the U.S. Penitentiary in Marion, Illinois, filed a *Bivens* action, *pro se*, challenging the conditions of his confinement. (Doc. 1.) Specifically, Plaintiff claims that by refusing to provide medical treatment for his hernia, Defendants Stepp, Bakke, Lee, Carids, Herschberger, Conner, Nitchols, Tharp, Bezy, and Miller violated his Eight Amendment right to be free from cruel and unusual punishment. Plaintiff additionally claims that Defendant Conner violated his First Amendment right to seek redress of grievances.

This matter comes before the Court on a Report and Recommendation

("the Report") filed by U.S. Magistrate Judge Philip M. Frazier on July August 3, 2005, pursuant to **28 U.S.C. § 636(b)(1)(B)**. (Doc. 53.) Magistrate Judge Frazier's Report recommends (1) that Plaintiff's claims against Defendant Conner, deceased, be dismissed; (2) that Plaintiff's *in forma pauperis* status be revoked; (3) that Plaintiff be directed to pay the filing fee within thirty days; (4) that Defendants' motions to dismiss or for summary judgment (Docs. 21, 35, 44) be granted in part and denied in part such that Plaintiff's claims against Defendants Bezy, Herschberger, Miller, Tharp, and Nitchols be dismissed without prejudice for lack of personal jurisdiction and that Plaintiff's claims against Defendants Bakke, Stepp, Oxford, and Lee be dismissed without prejudice for failure to exhaust administrative remedies; and (5) that Plaintiff's Motion for Judgment as a Matter of Law (Doc. 40) be denied.

Under **Rule 73.1** of the Local Rules of the Southern District of Illinois, the parties had ten days in which to serve and file written objections to the Report. As of this date, no objections have been filed. The ten-day period in which parties may file objections has expired. Therefore, pursuant to **28 U.S.C. § 636(b)**, this Court need not conduct *de novo* review. ***Thomas v. Arn*, 474 U.S. 140, 149-52 (1985)**.

Accordingly, the Court **ADOPTS** the Report. (Doc. 53.) The Court **DISMISSES** Plaintiff's claims against Defendant Conner, **REVOKES** Plaintiff's *in forma pauperis* status, **DIRECTS** Plaintiff to pay the filing fee of \$150.00 within

thirty days, **GRANTS** in part and **DENIES** in part Defendants' motions to dismiss or motions for summary judgment by **DISMISSING without prejudice** Plaintiff's claims against Defendants Bezy, Herschberger, Miller, Tharp, and Nitchols for lack of personal jurisdiction, and **DISMISSING without prejudice** Plaintiff's claims against Defendants Bakke, Stepp, Oxford, and Lee for failure to exhaust administrative remedies, and **DENYING** Plaintiff's Motion for Judgment as a matter of law (Doc. 40).

**IT IS SO ORDERED.**

Signed this 29th day of August, 2005.

/s/ David RHerndon  
**United States District Judge**